

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division

In the matter of:	)	
	)	Adversary Proceeding
PADGETT F. ODUM )		
VICKIE S. ODUM )		Number <u>97-2002</u>
(Chapter 13 Case <u>96-21316</u> )	)	
	)	
<i>Debtors</i>	)	
	)	
	)	
	)	
PADGETT F. ODUM )		
VICKIE S. ODUM )		
	)	
<i>Plaintiffs</i>	)	
	)	
	)	
	)	
v.	)	
	)	
INTERSTATE UNLIMITED )		
FEDERAL CREDIT UNION )		
	)	
<i>Defendant</i>	)	

**MEMORANDUM AND ORDER**

The above-captioned case was tried on April 10, 1997. After considering the evidence, I make the following Findings of Fact and Conclusions of Law pursuant to Bankruptcy Rule 7052

## FINDINGS OF FACT

On November 13, 1996, Debtors filed for bankruptcy under Chapter 13. Debtors scheduled Defendant, Interstate Unlimited Federal Credit Union, as an unsecured creditor in the amount of \$4,200.00. One day prior to the bankruptcy filing, the balance in Debtors' checking account on deposit with the Credit Union was \$682.59. By letter dated December 12, 1996, the Credit Union attempted to freeze that sum of money, one day after a direct deposit of Debtors' then current paycheck had been received.

Although the Credit Union only attempted to freeze an amount equal to the balance in Debtors' checking account on the day before their bankruptcy filing, the Credit Union actually froze the entire balance of Debtors' account. Thus, some checks which should have been honored by the Credit Union were returned for insufficient funds. Specifically, nine checks, totaling \$264.50, were returned by the Credit Union after the administrative freeze became effective and all were presented at a time when the account had a balance of \$832.28, or approximately \$150.00 above the balance in Debtors' checking account on the day before filing. Additionally, the Credit Union had erroneously drafted a \$67.00 monthly payment from the account post-petition for repayment of an outstanding loan obligation.<sup>1</sup> Thus, as a result of this erroneous debit, the account should

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<sup>1</sup> Although this debit occurred after filing, it occurred before the Credit Union had actual notice of the pendency of the case. The order of relevant events are as follows. Debtors filed for bankruptcy on November 13, 1996. The Credit Union deducted the loan payment on November 24, 1996. On December 4, 1996, the Credit Union received notice of Debtors' bankruptcy. On December 9, 1996, the Credit Union removed the draft order from Debtors' account. On December 12, 1996, Credit Union attempted to freeze Debtors' checking account up to an amount equal to the balance of Debtors' account on the day before filing, i.e. \$682.59. The Credit Union credited Debtors' account in the amount of the erroneous November 24 loan deduction during the month of March, several weeks prior to this April 10, 1997, hearing.

in fact have been carrying an available balance of \$220.00 at the time the checks were returned. Upon review of the amounts of the checks returned, it appears that seven of the nine checks returned should have been paid by the Credit Union.

Debtors contend that because of the Credit Union's administrative errors, including freezing the entire account and permitting the monthly draft post-petition, Credit Union erroneously returned a number of checks which constituted a violation of the automatic stay and subjects the Credit Union to both actual and punitive damages. Debtors' claim actual damages, including any amount that they were forced to render to various payees who charged returned check expenses when insufficient fund checks are redeemed, injury to their reputation, and attorney's fees in the amount of \$750.00. Debtors also claim punitive damages in the amount of \$1,000.00.

In opposition, Credit Union contends that any violation of the stay that it may have committed was unintentional and that all other acts were in compliance with the provisions of the Bankruptcy Code. Credit Union relies on the case of Citizens Bank of Maryland v. Strumpf, --- U.S. ---, 116 S.Ct. 286, 113 L.Ed.2d. 258 (1995), as supporting its position that it had the right to freeze the account.

### CONCLUSIONS OF LAW

In pertinent part, 11 U.S.C. Section 362(a)(3), (6) and (7) provide,

(a) . . . , a petition under [this] section . . . , operates as a stay, applicable to all entities, of--

(3) . . . any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title;

Although the Bankruptcy Code prohibits any act to set off a debt, the Supreme Court has held that an administrative freeze is not a violation of the automatic stay. *See Citizens Bank of Maryland v. Strumpf*, --- U.S. ---, 116 S.Ct. 286, 113 L.Ed.2d. 258 (1995). In *Strumpf*, the Supreme Court held that the placing of an administrative freeze on an account by a bank and filing of a subsequent motion for relief was not a violation of Section 362(a)(7). In this case, Credit Union did not set off the amount in the Debtors' account but, instead, filed a Motion for Relief for authority to proceed with its state court remedies. Accordingly, because Credit Union did not set off the funds before filing the appropriate Motion for Relief, no violation of Section 362(a)(7) occurred.

Section 362(a)(6) prohibits "any act to collect, assess, or recover a claim against the debtor." 11 U.S.C. § 362(a)(6). Although Section 362(a)(6) is often interpreted broadly, in this case, there is no evidence which supports a finding that the Credit Union attempted to collect a claim against the Debtor. Specifically, Mr. Michael Prince, President

of Interstate Unlimited Federal Credit Union, testified that the Credit Union, being aware of its right to place an administrative freeze on a debtors account, attempted only to freeze the Debtors account and proceed with a Motion for Relief in bankruptcy. This testimony is supported by the actions of Credit Union's counsel who sent an "Agreed Order Terminating the Automatic Stay" to Debtors' counsel within several days of the freeze. Testimony also revealed that the placing of the administrative freeze on the day after the direct deposit was a coincidence and not committed with an intent to harass or coerce collection of a debt. In fact, Mr. Prince testified that the institution of the freeze had commenced several days prior although it was not implemented until December 12, 1996, one day after the direct deposit. Moreover, the automatic loan deduction of \$67.00 occurred before the Credit Union received notice of the bankruptcy, and the \$67.00 was recredited recently. Accordingly, because Credit Union did not attempt to collect a debt or recover a claim, Debtors' request pursuant to Section 362(a)(6) is denied.

Finally, Section 362(a)(3) prohibits "any act to obtain possession of property of the estate . . . or to exercise control over property of the estate." (emphasis added). Here, the issue presented is whether the Credit Union's freeze of funds in excess of the permitted setoff amount violated the automatic stay. It is undisputed that the Credit Union knew of the automatic stay before it froze Debtors' account. It is also clear that its actions amounted to an exercise of control over property of the Debtors' estate. What is unclear is whether this violation of the Section 362(a)(6) gives rise to damages pursuant to Section 362(h) and after a review of the evidence presented I hold that it does not.

Section 362(h) requires bankruptcy courts to award damages to "[a]n individual injured by any willful violation of the stay . . . ." 11 U.S.C. § 362(h). A "willful violation" does not require specific intent; rather, a court shall award damages upon finding that a creditor knew of the automatic stay and that its actions were intentional. *See In re Bloom*, 875 F.2d 224, 227 (9th Cir. 1989). However, the purpose of Section 362(a)(3) is "to prevent dismemberment of the estate" and to enable an "orderly" distribution of the debtor's assets. *See* H.R.Rep. No. 595, 95th Cong., 1st Sess. 340, 341 (1977); *Hillis Motors, Inc. v. Hawaii Auto Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993). Moreover, courts have held that the provisions of Section 362(a)(3) while broad in scope "should be construed no more expansively that is necessary to effectuate legislative purpose." *In re Continental Air Lines, Inc.*, 61 B.R. 758, 779 (S.D.Tex. 1986); *see also In re Inslaw, Inc.*, 932 F.2d 1467, 1473 (D.C.Cir. 1991) ("The object of the automatic stay provision is essentially to solve a collection action problem - to make sure that creditors do not destroy the bankrupt estate in their scramble for relief"). Because there was no evidence presented that the Debtor incurred any expenses and that the estate has in any way been diminished and because the Credit Union remedied all administrative errors as soon as practicable, I hold that no liability exists pursuant to Section 362(a)(3).

Debtors presented no evidence as to any damages which they sustained, including any amounts charged by the payees of any erroneously dishonored check or other evidence of actual damages such as injury to Debtors' reputation. In fact, neither Debtor

testified at the hearing. While the Court was asked to take judicial notice of the fact that return check fees are charged, this is not a matter which is of such certainty as to amount that the Court can unilaterally impose damages for this element of the case. *See* Fed.R.Evid. 201(b) (requiring fact to be generally known within the territorial jurisdiction or capable of accurate and ready determination by source whose accuracy cannot be reasonably questioned). Moreover, while the Court might be able to infer that injury to reputation is a natural and probable result of the dishonoring of checks, there was no direct testimony as to any humiliation, embarrassment, or other injury to reputation.

Finally, the Credit Union offered to write letters to each of the vendors or merchants involved explaining that the checks were dishonored through fault of the Credit Union and I find this remedy to be sufficient to cure the injury to reputation that may have occurred in this case. Accordingly, Debtors' request pursuant to Section 362(a)(3) is denied.

#### O R D E R

Pursuant to the foregoing findings of fact and conclusions of law, IT IS THE ORDER OF THIS COURT that Debtors' request for sanctions and attorneys' fees is DENIED. Defendant Credit Union is directed to issue the letters of explanation referred to above if such action has not been taken already.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of June, 1997.